

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND ORDER FOR JUDGMENT
vs.)	
)	
Mark A. Koelzer; Paula Koelzer)	
d/b/a Paula J. Koelzer; and State of)	Case No. 1:08-cv-092
North Dakota, d/b/a Office of State)	
Tax Commissioner,)	
)	
Defendant.)	

The above-entitled matter came before the Court at Bismarck, North Dakota, on February 23, 2009, upon application of Drew H. Wrigley, United States Attorney for the District of North Dakota, and Kent Rockstad, Assistant United States Attorney, attorneys for the United States, for entry of default judgment as to the defendants, Mark A. Koelzer, Paula Koelzer, a/k/a Paula J. Koelzer, and State of North Dakota, d/b/a Office of State Tax Commissioner. Evidence was presented for and on behalf of the United States in support of its application, and no one appeared for, or on behalf of the defendants.

The above-entitled action was commenced by the plaintiff acting under the direction of the Attorney General of the United States of America, and was brought under the provisions of Title 28, United States Code, Section 1345, against the above-named defendants. The action was regularly and duly commenced by the filing of a complaint in the office of the Clerk of Court. The defendants, Mark A. Koelzer, Paula Koelzer, a/k/a Paula J. Koelzer (Paula Koelzer), and State of North Dakota, d/b/a Office of State Tax Commissioner, have been duly and regularly served with the complaint pursuant to the Federal Rules of Civil Procedure, and the time for answering has

expired as to the defendants. The defendants have failed to appear or answer in these proceedings, and are in default.

Now, upon the evidence adduced by the United States and upon due consideration of all matters pertaining to the record, the Court makes the following:

FINDINGS OF FACT
FIRST CAUSE OF ACTION

1.

On or about October 2, 1984, Curtis H. Johnson and Nannette M. Johnson, for value received, made, executed, and delivered to the United States their Promissory Note in writing, in which they promised to pay the United States the sum of \$41,000.00 plus interest on the unpaid balance at the rate of 11 7/8 percent per annum.

2.

To secure the balance due and owing on the Promissory Note, Curtis H. Johnson and Nannette M. Johnson made, executed, and delivered to the United States, a real estate mortgage on or about October 2, 1984, in which they granted, bargained, sold, and conveyed by mortgage to the United States, the following-described real estate situated in the County of McLean, State of North Dakota:

Lot 2, Block 2, Bicentennial Addition to the City of Garrison, North Dakota.

This mortgage was recorded in the office of the County Recorder of McLean County, North Dakota, on October 2, 1984, in Book B-105 of Mortgages, Page 455, as Document No. 297699.

3.

On or about January 21, 1993, Mark A. Koelzer and Paula Koelzer, a/k/a Paula J. Koelzer (Paula Koelzer), signed an Assumption Agreement, assuming the Promissory Note, and real estate mortgage described above. Pursuant to the terms of the agreement, Mark A. Koelzer and Paula Koelzer assumed liability for, and agreed to pay to the United States, the principal sum of \$38,683.42 plus interest on the unpaid balance at the rate of 7.75 percent per annum.

4.

The defendants, Mark A. Koelzer and Paula Koelzer, have defaulted in the payment of the assumption agreement, secured by the mortgage listed above, in that they have failed to make timely payments of principal and interest.

5.

There is now due and owing on the indebtedness evidenced, principal in the sum of \$31,453.29, and for protective advances made for payment of appraisal, fees, late charges, and escrow which include taxes and insurance, principal in the sum of \$7,747.09, and interest to February 10, 2009, of \$3,201.05, with interest accruing thereafter until the date of judgment at the daily rate of \$8.2165, together with costs and disbursements of this action in the amount of \$374.00, making a total of \$42,775.43, plus prejudgment interest, which accrues at a daily rate of \$8.2165, until the date of judgment, with interest accruing after the date of judgment at the legal rate.

6.

By reason of the defaults in the conditions and covenants of the Assumption Agreement, Promissory Note, and real estate mortgage noted above, the United States has declared the entire amount of the indebtedness as evidenced by the Assumption Agreement due and owing. All

administrative and servicing actions have been completed and the United States has provided defendants, Mark A. Koelzer and Paula Koelzer, with all the notices required by federal law.

7.

On or about August 28, 2008, the United States served upon the defendants, Mark A. Koelzer and Paula Koelzer, residing at Garrison, North Dakota, and record owners of the property described above, by certified mail, a Notice of Intention to Foreclose Real Estate Mortgage, giving the dates of the mortgage, the description of the mortgaged property, and the full amount due for principal and interest, and advised them that unless the full amount of the indebtedness was paid within thirty days from the date of mailing the Notice, an action would be instituted for the foreclosure of the mortgage.

8.

On or about September 19, 2008, defendant State of North Dakota, d/b/a Office of State Tax Commissioner, entered a state tax lien against defendant Mark A. Koelzer in the amount of \$144.52. The tax lien was docketed in the office of the County Recorder, McLean County, North Dakota, on September 19, 2008, as Doc. No. 08-000486849-9. The tax lien is junior and subordinate to the mortgages of the United States.

9.

On or about September 19, 2008, defendant State of North Dakota, d/b/a Office of State Tax Commissioner, entered a state tax lien against defendant Paula J. Koelzer in the amount of \$144.52. The tax lien was docketed in the office of the County Recorder, McLean County, North Dakota, on September 19, 2008, as Doc. No. 08-000486845-5. The tax lien is junior and subordinate to the mortgages of the United States.

10.

On or about December 3, 2001, defendants Mark A. Koelzer and Paula Koelzer filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of North Dakota. A Discharge of Debtor was entered on March 14, 2002. (See In Re Mark A. Koelzer and Paula K. Koelzer, Debtors, Case No. 01-32073 (December 3, 2001)).

11.

The defendants Mark A. Koelzer or Paula Koelzer, are not in the Armed Forces of the United States.

SECOND CAUSE OF ACTION

1.

Paragraphs 7, 8, 9, 10 and 11 of the First Cause of Action are incorporated by reference, and made a part of this Second Cause of Action.

2.

On or about January 21, 1993, Mark A. Koelzer and Paula Koelzer, for value received, made, executed, and delivered to the United States their Promissory Note in writing, in which they promised to pay the United States the sum of \$1,400.00, plus interest on the unpaid balance at the rate of 7.75 percent per annum.

3.

To secure the balance due and owing on the Promissory Note, Mark A. Koelzer and Paula Koelzer made, executed, and delivered to the United States a real estate mortgage on or about January 21, 1993, in which they granted, bargained, sold, and conveyed by mortgage to the

United States the following-described real estate situated in the County of McLean, State of North Dakota:

Lot Two (2), Block Two (2), Bicentennial Addition to the City of Garrison, according to the official Plat and Replat on record in the office of the Register of Deeds in and for the County of McLean, North Dakota.

This mortgage was recorded in the office of the County Recorder of McLean County, North Dakota, on January 27, 1993, in Book B-121 of Mortgages, Page 315, as Document No. 319460.

4.

The defendants, Mark A. Koelzer and Paula Koelzer, have defaulted in the payment of the Promissory Note, secured by the mortgage listed above, in that they have failed to make timely payments of principal and interest.

5.

There is now due and owing on the Promissory Note, principal in the sum of \$1,093.14 and interest to February 10, 2009, of \$109.27, for a total of \$1,202.41, plus prejudgment interest which accrues at a daily rate of \$.2321 until the date of judgment, with interest accruing after entry of judgment at the legal rate.

6.

By reason of the defaults in the conditions and covenants of the Promissory Note, and real estate mortgage noted above, the United States has declared the entire amount of the indebtedness as evidenced by the Promissory Note due and owing. All administrative and servicing actions have been completed and the United States has provided defendants Mark A. Koelzer and Paula Koelzer with all the notices required by federal law.

CONCLUSIONS OF LAW

1.

The Court has jurisdiction over the subject matter of this action and the parties thereto.

2.

The defendants have been duly and regularly served in this action according to law.

3.

There is due and owing to the United States by Mark A. Koelzer and Paula Koelzer, in the original principal amount of \$38,683.42, assuming a Promissory Note dated October 2, 1984, principal in the sum of \$31,453.29, and for protective advances made for payment of appraisal, fees, late charges, and escrow which included taxes and insurance, principal in the sum of \$7,747.09, and interest to February 10, 2009, of \$3,201.05, with interest accruing thereafter until the date of judgment at the daily rate of \$8.2165; on the Promissory Note dated January 21, 1993, in the original amount of \$1,400.00, principal in the sum of \$1,093.14, and interest to February 10, 2009, of \$109.27, with interest accruing thereafter until the date of judgment at the daily rate of \$.2321, plus costs and disbursements of this action amounting to \$374.00, making a total of \$43,977.84 as of February 10, 2009, plus prejudgment interest which accrues at a daily rate of \$8.4486 until the date of judgment after which interest accrues at the legal rate.

4.

The United States has a first and second valid, paramount, and subsisting lien upon the real estate described in the complaint and the findings of fact, and the United States is entitled to the foreclosure of its real estate mortgage and to have the real estate sold and the proceeds of the sale applied to the indebtedness described above set forth against Mark A. Koelzer and Paula Koelzer.

5.

The judgment of the defendant, State of North Dakota, d/b/a/ Office of State Tax Commissioner, is junior and subordinate to the above-referenced real estate mortgage of the United States.

6.

The defendants, Mark A. Koelzer, Paula Koelzer, and State of North Dakota, d/b/a Office of State Tax Commissioner, have no further right, title or interest in and to the real estate described in the complaint and the findings of fact.

7.

There shall be no deficiency judgment against defendants Mark A. Koelzer, and Paula Koelzer, a/k/a Paula J. Koelzer.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 26th day of February, 2009.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court